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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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No. 960

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J. C. PATTERSON, ET AL.,

*Petitioners,*

vs.

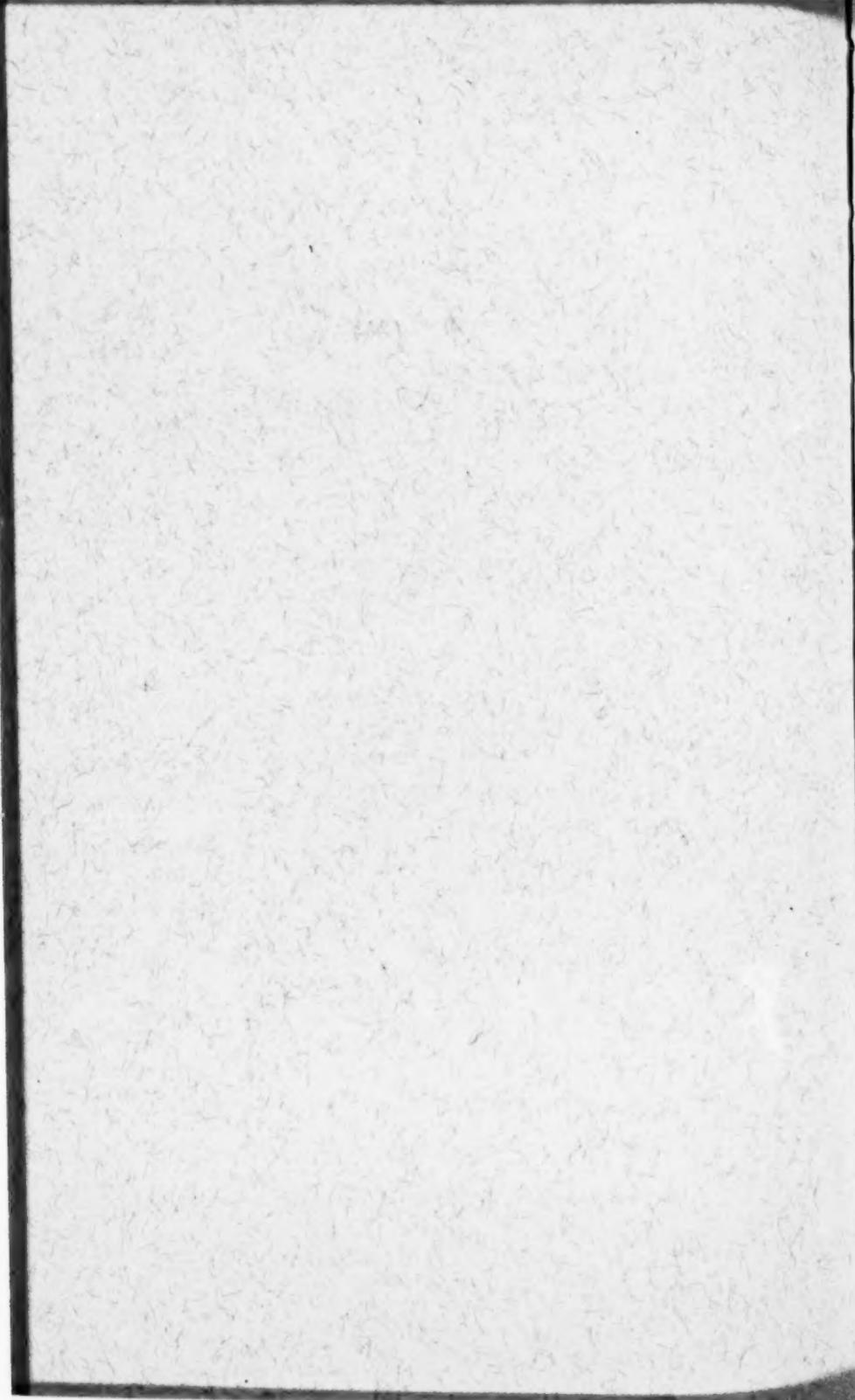
THE TEXAS COMPANY.

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PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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J. I. KILPATRICK,  
*Counsel for Petitioners.*



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**PETITION FOR WRIT OF CERTIORARI.**

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I.

**Summary Statement of Matter Involved.**

In this case, the Circuit Court of Appeals for the Fifth Circuit held that cash money, overriding royalties, and division of profits contracted for, and cash money to be paid for each well to be drilled in the future, all in addition to the usual royalties provided for in the oil and gas leases, was ROYALTY and not BONUS. The Petitioners sued for a division of the BONUS alleged to have been derived under oil and gas leases, and their contract with the Respondent entitled them to a portion of any BONUS; therefore, the holding of the Circuit Court of Appeals deprived the Petitioners of substantial rights and was in conflict with other decisions as hereinafter pointed out.

Petitioners filed suit against the Respondent in United States District Court for the Northern District of Texas, Lubbock Division, and appealed from an adverse judgment. The judgment of the lower court was affirmed by the Circuit Court of Appeals.

The suit was for the recovery of Petitioners' proportionate part of a BONUS in the nature of cash and overriding royalties and rights reserved, which were received and to be received by Respondent for leases on mineral lands in which Petitioners own an interest, and for an accounting.

Petitioners executed to Mineral Investing Corporation, a subsidiary of Respondent, a conveyance of all oil, gas, and other minerals in 1600 acres of land in Yoakum County, Texas (R. 37). In their deed they provided that the Vendee, its successors and assigns, should have the right to execute a mineral lease or leases on said land, but in the event of lease, as a part of the consideration for the conveyance, the Petitioners should receive one-fourth ( $\frac{1}{4}$ ) of any BONUS received by the Vendee for any lease which might be executed on the land, one-fourth ( $\frac{1}{4}$ ) of any rentals received under any such lease, and in the event of production, one-thirty-second (1/32nd) of the minerals produced (R. 37).

The Mineral Investing Corporation conveyed to Respondent the mineral interest in the said lands (R. 366). The Respondent conveyed the property to Tom T. Freeman, Trustee (R. 370). Freeman was an employee of the Respondent and Trustee for it (R. 135). Freeman, as Trustee, executed three leases on the 1600 acres of land to the Respondent, for a recited consideration of \$10.00 and other good and valuable consideration (R. 372). No consideration was actually paid for the leases (R. 135-136). The leases were dated December 30, 1938. They were the usual commercial leases and provided for the usual one-eighth ( $\frac{1}{8}$ ) royalty (R. 127). The Respondent made no effort

at any time to lease the land to anyone else (R. 136-137), and it was handled in this manner for the convenience of The Texas Company (R. 171).

By an Agreement or assignment (Petitioners' Exhibit No. 7), dated December 31, 1938, the Respondent, The Texas Company, made a blanket assignment to Aloco Oil Company of forty-five (45) mineral leases on a total of 15,846 acres of land in Yoakum County, Texas, which assignment included the three leases involving the 1600 acres in question. This Agreement recited that the Respondent received from the Aloco Oil Company, for the assignment, the sum of \$441,445.72 in cash, and was to receive certain overriding royalties and rights, and the payment of \$3500.00 per well for each well drilled on the 15,846 acres. The Respondent refused to account to the Petitioners for any part of the consideration already received and to be received by it under the Agreement. Respondent admitted that it was "trying to make a deal on all of the properties as a whole in a large area"; and that the properties could be sold or let most advantageously by lumping them in the whole deal (R. 175).

The Petitioners contended and now contend that the consideration in cash and the overriding royalties and rights reserved in the Agreement were BONUS, and that they are entitled to their proportionate part of the consideration as spread over the entire acreage; that the manner of handling Petitioners' lands by the Respondent was a fraud upon the rights of the Petitioners and was done for the purpose of defeating Petitioners' rights to the BONUS received for the leases.

The Circuit Court of Appeals, in this case, held that the consideration for the Agreement, that is, the cash consideration and the overriding royalties and rights reserved, was ROYALTY and not BONUS, and that Petitioners were not entitled to receive any part thereof.

## II.

**Basis for Jurisdiction.**

(1) The date of the judgment to be reviewed was December 7, 1942. Order overruling Motion for Rehearing was entered by the Court on January 26, 1943.

(2) This Court has jurisdiction of this suit under Supreme Court Rule 38, Section 5 (b). The decision of the Circuit Court of Appeals in this case is in conflict with the decision of the Circuit Court of Appeals for the Tenth Circuit in the case of *Wright v. Bush*, 115 Fed. (2d) 265; and is in conflict with the decisions in the case of *Sheppard v. Standard Oil and Gas Co.*, 125 S. W. (2d) 643. (Writ of error denied); and the case of *State National Bank of Corpus Christi v. Morgan*, 135 Tex. 509, 143 S. W. (2d) 757.

## III.

**Question Presented.**

The consideration for the Agreement or assignment from The Texas Company to Aloco Oil Company, both as to cash and as to overriding royalties and rights reserved, and especially the latter, the usual royalty having been reserved in the lease, was BONUS and not ROYALTY, and Petitioners are entitled to receive their proportionate part of the BONUS which was spread over the entire acreage by the Agreement.

## IV.

**Reasons Justifying Writ.**

The Circuit Court of Appeals for the Tenth Circuit, in *Wright v. Bush* (supra), held, under a similar state of facts, that BONUS, in connection with an oil, gas, or mineral lease is "a consideration for the lease over and above the usual royalty reservation, and it is immaterial whether the

additional consideration is paid in money or out of oil, so long as it does not come out of the usual and ordinary royalty reservation to the landowner." To the same effect are the holding in *Sheppard v. Standard Oil and Gas Company* (*supra*), and *State National Bank of Corpus Christi v. Morgan* (*supra*).

## V.

**Opinion of the Court Below.**

The opinion in the United States Circuit Court of Appeals for the Fifth Circuit is reported in 131 Fed. (2d) 998.

**Prayer.**

Petitioners pray that a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that Court to certify and to send to this Court for its review and determination, a full and complete transcript of the record and all proceedings in the cause numbered and entitled on its docket 10,168, J. C. Patterson, et al., Appellants, vs. The Texas Company, Appellee, and that the judgment of the United States Circuit Court of Appeals for the Fifth Circuit may be reversed and this Petitioner may have such other and further relief in the premises as to this Honorable Court may seem lawful and just.

J. I. KILPATRICK,

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*First National Bank Building,*

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